

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROSALBA ESPINAL and JUAN RIVERA,
individually and on behalf of all others
similarly situated,

Plaintiffs,

-against-

SEPHORA USA, INC.,

Defendant.

Civil Action No. 1:22-cv-03034-PAE-GWG

**PLAINTIFFS' STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE
56.1 IN SUPPORT OF THEIR OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Dated: December 1, 2023

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I. PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF MATERIAL FACTS

1. Plaintiff Rosalba Espinal served as a Beauty Advisor for Sephora between January 2020 and March 2021. (*See* Amended Complaint, Doc. 18, attached hereto as Exhibit A (“Compl.”), ¶ 11.)

Plaintiffs' Response: Admit.

2. Espinal alleges that, as a Beauty Advisor, more than 25% of her job responsibilities included manual labor, namely “stocking products on shelves, assisting customers on the sales floor, tending the cash register, cleaning, and applying makeup to customers.” (*Id.*)

Plaintiffs' Response: Admit.

3. Plaintiff Juan Rivera served as an Operations Associate between November 2017 and July 2021. (Compl. ¶ 12.)

Plaintiffs' Response: Admit.

4. Rivera likewise alleges that, as an Operations Associate, more than 25% of his job responsibilities included manual labor, including tasks such as “receiving and removing shipments from pallets, unwrapping product shipments, organizing and processing shipments, carrying boxes of product back and forth between the stockroom and the sales floor, assembling product displays, and cleaning the store.” (*Id.*)

Plaintiffs' Response: Admit.

5. During their tenure with Sephora, Plaintiffs were paid on a biweekly, rather than weekly, basis. (Compl. ¶¶ 4, 11-12.)

Plaintiffs' Response: Admit.

6. Plaintiffs contend that, “for half of each biweekly pay period, [they were] injured in that [they were] temporarily deprived of money owed to [them], and [they] could not invest, earn interest on, or otherwise use these monies there were rightfully [theirs].” (Compl. ¶¶ 11-12).

Plaintiffs’ Response: Admit.

7. Plaintiffs do not allege Sephora that failed to pay them any wages. (*See generally* Compl.)

Plaintiffs’ Response: Deny. Plaintiffs allege Defendant failed to pay them on a weekly basis, as required by New York Labor Law § 191. First Amended Complaint (ECF No. 18), ¶ 2-5, 11, 12, 22.

II. PLAINTIFFS’ STATEMENT OF ADDITIONAL MATERIAL FACTS

1. More than 25% of Ms. Espinal’s job responsibilities at Sephora included manual labor, including tasks such as stocking products on shelves, assisting customers on the sales floor, tending the cash register, cleaning, and applying makeup to customers.

2. More than 25% of Mr. Rivera’s job responsibilities at Sephora included manual labor, including tasks such as receiving and removing shipments from pallets, unwrapping product shipments, organizing and processing shipments, carrying boxes of product back and forth between the stockroom and the sales floor, assembling product displays, and cleaning the store.

3. Class members were required to spend more than 25% of their time engaged in physical labor in their employment with Defendant.

4. According to the Federal Reserve, “[f]orty-six percent of adults say they either could not cover an emergency expense costing \$400, or would cover it by selling something or borrowing money.” *See* Report on the Economic Wellbeing of U.S. Households in 2015, Board

of Governors of the Federal Reserve System, *available at* <https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>.

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Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Yitzchak Kopel
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